

91ST CONGRESS }  
1st Session }

SENATE

{ REPORT  
No. 91-336

EXPORT EXPANSION AND  
REGULATION ACT

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REPORT

OF THE

COMMITTEE ON  
BANKING AND CURRENCY  
UNITED STATES SENATE

TO ACCOMPANY

S. 2696

TOGETHER WITH

MINORITY, SUPPLEMENTAL AND  
INDIVIDUAL VIEWS



JULY 24, 1969.—Ordered to be printed

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(iii)

## Calendar No. 329

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{ REPORT  
No. 91-336

### EXPORT EXPANSION AND REGULATION ACT

JULY 24, 1969.—Ordered to be printed

Mr. MUSKIE, from the Committee on Banking and Currency,  
submitted the following

### REPORT

together with supplemental and individual views

[To accompany S. 2696]

The Committee on Banking and Currency, having considered the same, reports favorably a committee bill (S. ) to provide continuation of authority for the regulation and expansion of exports, and for other purposes, and recommends that the bill do pass.

### Previous Legislation

The proposed legislation would replace the Export Control Act of 1949. The Export Control Act of 1949 (Public Law 11, 81st Cong., 63 Stat. 7; 50 app. U.S.C. 2021), approved February 26, 1949, codified and reenacted the previous laws which had enabled the executive branch to regulate exports, beginning with section 6 of the act of July 2, 1940 (54 Stat. 714). The original Export Control Act of 1949 ran to June 30, 1951. It was extended to June 30, 1953, by Public Law 33, 82d Congress (65 Stat. 43), to June 30, 1956, by Public Law 62, 83d Congress (67 Stat. 62), to June 30, 1958, by Public Law 631, 84th Congress (70 Stat. 407), to June 30, 1960, by Public Law 85-466 (72 Stat. 220), to June 30, 1962, by Public Law 86-464 (74 Stat. 130), to June 30, 1965 by Public Law 87-515, 87th Congress (76 Stat. 127), and to June 30, 1969 by Public Law 89-63, 89th Congress.

### Background

At the end of World War II, the United States was the only major manufacturing nation in the world whose industry and technology escaped the decimation occasioned by the war. Virtually all of the industrial and economic capabilities of the European nations were far

below the level needed to sustain those nations. Thus, it was necessary that the United States provide the necessary assistance to our allies, enabling them to rebuild their economies.

During this same period of time, the United States found itself in a situation of extreme tension and hostility in its relations with the Soviet Union. The Soviets adopted hostile positions and attitudes which made it clear that a real threat was being posed to the security of the United States and its West European allies.

It was found necessary by the United States to take whatever steps it could to reduce the potential Soviet threat to the security of the free world. One of the steps taken by the United States was to seek the implementation of a policy of restricting the export of essential products to the Soviet Union. The industrial capacity of Russia had been ravaged by the war as much as that of any other nation. It was believed that by denying the Russians access to sophisticated goods and technology, we would effectively slow the rehabilitation of the Soviet economy, thereby reducing the threat to the security of the United States and its allies.

Accordingly, the Export Control Act of 1949, along with other acts, was passed to implement the policy of denying key items to the Russians. As the nations of Eastern Europe entered the sphere of Soviet influence, the restrictive policies implemented under that act were extended to them. The Export Control Act has been in effect for the past 20 years. Its operative provisions are virtually the same as they were when enacted.

### **Material Changes Over 20 Years**

During that 20 years, virtually every circumstance which made the Export Control Act both advisable and feasible has changed.

#### **The Soviets Can Manufacture Their Own Needs or Purchase Them From Other Free World Nations**

The industrial capabilities of the Soviet Union have far surpassed their pre-World War II level. The Soviet Union now has a gross national product which is roughly half that of the United States. Its military capabilities now rival our own. Its economy is less dependent on imports than any other major nation in the world. Accordingly, it may have at one time been possible for the United States to impede the development of Russia by refusing to sell goods to it. This, however, is no longer true. The Soviet Union has demonstrated on many occasions that if the West refuses to sell it a particular product, it will itself manufacture that product.

Twenty years ago, the United States was the only major producer of sophisticated goods and technology. If the United States refused to sell such items to the Soviets, they could obtain them nowhere else. This, however, is no longer true. With the help of the United States, the economies, and particularly the industrial capabilities, of Western Europe and Japan have developed at a tremendous rate. Twenty years ago, these countries had virtually no industrial capability. Now, their economies have far surpassed the pre-World War II levels. These countries are now major industrial competitors with the United States. Thus, if the United States refuses to allow a particular good to be shipped to Russia, the good will be purchased from one of our allies.

This is possible because no other free world nation imposes upon itself the restrictions which the United States does. Virtually all free world countries, including the United States, participate in multi-nation arrangements which restrict or prohibit the flow of military items to Communist nations. However, the United States is the only Nation which unilaterally controls the export of approximately 1,300 categories of nonmilitary goods. This is done under the authority of the Export Control Act. Of these categories, it has been estimated that approximately 1,100 are freely available from other free world sources. Accordingly, the Russians may buy freely from our allies what we refuse to sell.

One of the greatest frustrations to American business is its extreme competitive disadvantage caused by the unilateral trade restrictions imposed by the United States. In order for it to sell a product included in the 1,100 categories to Russia or Eastern Europe, it must seek and obtain an export license. No other free world government imposes such a restriction on its businesses.

Therefore, the Russians now have two sources of goods available to them that they did not have 20 years ago. They can manufacture the goods themselves, or they can purchase them from the allies of the United States.

#### **The Relationship Between the United States and Russia is Changing**

As mentioned previously, tension was extreme between the United States and Russia 20 years ago. As the other nations of Eastern Europe entered the sphere of Russian influence, tension between those countries and the United States was also increased. However, for years now, the United States has sought to reduce tensions between Eastern Europe and Russia and this country, and to increase mutual understanding and the ability to work together toward goals of mutual benefit.

The attitude apparent in the language of the Export Control Act is one of open hostility, which is an accurate reflection of the prevailing attitude 20 years ago. The committee believes that it will be helpful in the attempt to reach greater understanding with Russia and the nations of Eastern Europe if the legislation which deals with the regulation of exports accurately reflects current attitudes rather than ones which prevailed 20 years ago.

#### **Drastic Change in U.S. Balance of Payments During the Last 20 Years**

Twenty years ago, the economy of the United States occupied a unique position. There was a tremendous demand for the goods and services produced by the United States. Accordingly, there was a constant inflow of gold and a very strong balance-of-payments surplus. That situation has changed dramatically over the years. For the last several years, the United States has experienced a deficit in its balance of payments. For a period of time, that deficit was prevented from being larger because of a favorable balance of trade. However, in recent years the trade balance surplus of the United States has decreased sharply, thereby offsetting some of the steps being taken by the United States to improve the overall balance-of-payments situation. The committee believes it to be mandatory, that the United

States take steps to increase its trade balance surplus, as well as to improve the other factors in the balance-of-payments consideration. Under this circumstance, the United States can no longer afford to ignore an existing and growing market for its goods and services unless some other real and overriding national objective would be served. In the hearings on East-West trade held last year by the Subcommittee on International Finance, George W. Ball, former Under Secretary of State and permanent representative to the United Nations, stated:

It seems to me that the time is long past, when we could afford to refuse our farmers, our industrialists, and our labor the benefits of profitable trade in nonstrategic items with the Soviet Union and Eastern Europe, since it is perfectly clear that that refusal has had no significant effect on the economies of the Communist nations. We must, in our own interest, stop limiting our trade merely for the momentary moral glow we may derive from an act of self-denial. If we are to enjoy economic good health and bring our balance of payments into equilibrium, we shall need all the foreign exchange we can decently earn, and I think we should stop giving away business to our competitors.

Thus, the committee believes that the material changes in the financial situation of the United States are an important factor in the consideration of this legislation.

#### **Trade With Eastern Europe Will Increase Materially if Restrictions Are Relaxed**

Some argue that relaxed restrictions on trade with Russia and Eastern Europe will not result in an appreciable increase in the total volume of trade between the nations of Eastern Europe and the free world, because of the scarcity of hard currency in Eastern Europe. Without arguing that point, the committee notes that the United States has approximately 16 percent of total free world exports, but only about 2 percent of the total free world exports to Russia and Eastern Europe. The committee believes that if American business were freed of unnecessarily restrictive trade policies, that are imposed on no other free world business, it would be able to capture a substantially greater portion of the existing market than it now has. This would greatly contribute to the betterment of the United States economic health. The committee wishes to point out that, even with existing restrictions, over the past several years, the United States has had a trade surplus with Russia and the nations of Eastern Europe. The committee believes that these surpluses can be increased if American business is placed on a more equal competitive basis with the businesses of our allies. This can be accomplished by relaxing the unilateral trade restrictions now exercised under the Export Control Act.

#### **Legislation Should Reflect Current Situation**

The committee believes that virtually every major factor giving rising to the enactment of the Export Control Act has undergone a material change in the past 20 years. Under this circumstance, the committee believes, that it would be unwise to extend, without

amendment, the existing law. The committee believes that the legislation passed by this Congress should reflect the circumstances as they now exist, rather than circumstances as they used to be. The committee believes that the bill reported by it achieves this objective.

#### **Under the Bill the President Would Retain All Necessary Authority**

The bill would allow the President to retain the authority to prohibit and curtail exports. At the same time, it would encourage him to exercise that overall authority in such a fashion as to increase East-West trade. It focuses on some of the changed circumstances mentioned earlier and encourages administration of the act in such a fashion as to recognize such changes and react to them.

#### **Policy to Restrict Goods of Military Potential Stated for First Time**

The committee wishes to call particular attention to one other aspect of the bill. The bill declares the policy of the Congress to be to *restrict* the export of goods and technology, which would make a significant contribution to the military potential of a nation or nations which would be detrimental to the national security. The present law contains no such express statement of policy. Thus, the committee would underline its determination that the genuine national security interests of the United States continue to be protected, while at the same time pursuing a more rational trade policy in the light of present circumstances.

#### **Cargo Preference Restrictions**

The committee considered including in the bill a provision which would prohibit the Department of Commerce from imposing discriminatory shipping requirements as a condition to obtaining a license to export wheat and feed grains to Russia and several nations of Eastern Europe. This restriction arose from a presidential decision in 1963 which authorized the sale of a large amount of wheat to Russia. The committee did not address itself to the advisability or legality of various decisions which dealt with the transportation of the wheat sold at that time.

The committee is concerned, however, by the continued use of those decisions as authority to impose special cargo requirements on the export of wheat and feed grains.

The Commerce Department has since 1963 administered the Export Control Act in such a fashion as to require that at least 50 percent of all wheat and feed grains sold to Russia, and of all wheat sold to Bulgaria, Czechoslovakia, Hungary, and East Germany be shipped on American-flag vessels. Testimony before the Foreign Relations Committee in 1965 and this committee on July 10, 1969, indicated that the restriction is imposed on all such sales whether or not they are Government sponsored or purely private commercial sales. The testimony of the State Department in these hearings indicates that the imposition of such restriction on commercial sales is



violative of more than 30 commercial treaties which the United States now has with other nations of the world.

Aside from the question of the legality of the restriction under these treaties, the committee is also of the opinion that there is grave doubt as to the legality of the restriction under the provisions of the Export Control Act. That act contains a provision which prohibits the exercise of the authority of the act on surplus agricultural commodities except to the extent necessary to further the foreign policy and national security objectives of the United States. It is questionable whether or not the cargo preference restriction furthers either of these objectives. Even if such objectives could conceivably be furthered, the committee has heard no one explain, and really can conceive of no rational explanation, why such objectives would be furthered by the imposition of this restriction only on agricultural products. The committee notes that such a restriction has not been placed on the shipment of any other product.

Without further regard to the legality under the Export Control Act, the committee wishes to make it clear that it is not intended that the Export Expansion and Regulation Act be interpreted by the executive department in such a manner as to continue to allow such a restriction.

The committee also considered the substantive effect of the restriction. It found that, as both the Departments of State and Commerce testified, the restriction has had the effect of preventing virtually all commercial sales of wheat and feed grains to the named countries because of increased transportation costs. The restriction has not helped any segment of the American economy since there have been virtually no sales.

It has been asserted that there is not a substantial demand for wheat and feed grains to Russia and the East European countries affected by the restriction. During fiscal years 1965 through 1968, the United States shipped just under 2½ million bushels of wheat to those countries. During the same period of time, Canada shipped 551 million bushels; Australia shipped 53 million bushels; Argentina shipped 86 million bushels; and France shipped 102 million bushels.

Wheat shipments to Poland and Yugoslavia are not affected by the shipping restriction. During fiscal years 1965 through 1968, the United States shipped a total of 138 million bushels of wheat to Poland and Yugoslavia, compared with less than 2½ million bushels shipped to the countries affected by the restriction. This comparison persuades the committee that there is a substantial market for U.S. wheat and feed grains. The committee believes that the restriction must be removed so that the possibility of sales for these products may be pursued.

The committee considered placing a specific prohibition against the restriction in the Export Expansion and Regulation Act. However, it declined to do so because the origin of the restriction is not in a congressional act but in a decision made by the executive branch, and, therefore, can be removed by the executive branch.

The committee does, however, expect the Department of Commerce to take immediate steps as are necessary to remove the requirement that 50 percent of all commercial wheat and feed grain sales to Eastern European countries and Russia be shipped in American-flag vessels.

This, naturally, will not affect other acts of Congress which impose cargo preference requirements in regard to largely governmental transactions or shipments. It is conceivable that additional sales of wheat or feed grains will be made which can be considered to be governmental in nature. Whether a particular shipment is to be regarded as governmental, thereby allowing cargo preference requirements under some circumstances, or commercial, thereby precluding the imposition of cargo preference requirements, will depend on the circumstances of each individual case. Among the factors which must be considered in making this determination are whether the commodity is sold under an export subsidy, whether the purchaser is a foreign government, whether the U.S. Government negotiated the transaction, the size of the transaction, and any other factors. The committee does not intend that the named factors be considered conclusive one way or another. They are merely the types of factors which can be considered.

The committee will be observing closely the action of the Department of Commerce in this matter. If action satisfactory to the committee is not taken on this matter within 2 months after enactment of this act, the committee will immediately schedule additional hearings on the subject and on specific legislation to accomplish the intention of the committee.

## Discussion of Individual Provisions

### Findings

Section 2 of the bill contains the findings made by Congress. Subsection (1) points out that the availability of certain materials at home and abroad varies so that the quantity and composition of U.S. exports may affect the welfare of the domestic economy and may have an important bearing upon the fulfillment of the foreign policy of the United States. Thus, the Congress would continue to recognize that the domestic economy may be affected if items which are in short supply in the United States are exported in such quantities that the demands for such product in the United States are unable to be met. The same consideration may apply in areas of foreign policy if such an item in sufficient quantity is not available to one of our allies.

Subsection (2) contains a finding that the unrestricted export of materials without regard to whether they make a significant contribution to the military potential of any nation or nations may adversely affect the national security. The Export Control Act contains a similar finding but also contains a finding that the economic significance of an exported material may adversely affect our national security.

The committee believes that there is no justification for continuing to find that the unrestricted export of materials without regard to their potential economic significance may adversely affect the national security. As noted earlier, after World War II, the attitude and actions of the Soviet Union presented a real threat to the national security of the United States. Also, the Soviet economy was undergoing a real struggle to provide the barest necessities because of the ravages of the war. Consequently, it was deemed prudent by the United States to deny its export of essential materials to the Soviet Union, thereby slowing down the redevelopment of the Soviet Union, with particular emphasis on its warmaking capabilities.

Basic factors have changed over the past 20 years which materially affect the decision of the committee to remove reference to goods of economic significance in connection with the national security.

When the Export Control Act was passed, the Soviet economy was in the process of rebuilding. Denial of access to needed materials conceivably slowed that rebuilding process. Now, however, the Soviet economy has become one of the most self-sufficient economies on earth. It has a gross national product of approximately one-half that of the United States. Only about 1½ percent of this gross national product is accounted for by imports. Thus, the Soviets have completed their rebuilding process and in so doing, have become more self-reliant than ever. Some have suggested that it would behoove the United States to increase its trade with the Soviet Union, thereby decreasing the self-reliance of the Russians. For example, George W. Ball testified last year as follows:

\* \* \* the Soviet Union wanted to buy some wide-diameter pipe from Western Europe for use in the pipeline that it was building into Germany. And the United States made a very great point of the fact that the Soviets should be denied that pipe, and we exercised a great persuasion on our Western Allies. As a consequence, the Soviets were denied that wide-diameter pipe, with the result that they built a pipe mill to produce wide-diameter pipe. Thus, because of our interference they moved toward a greater autarky and a greater independence of the West.

Without dwelling further on this particular argument, the committee believes that the evidence is clear that the Soviet Union now has a strong, viable economy which is capable of supplying its own needs. Thus, to deny goods of economic significance to the Soviet Union will not prevent them from obtaining those goods, either by manufacturing the goods themselves, or by buying them elsewhere.

This leads to another point. At the end of World War II, the United States was virtually the only source of sophisticated goods and technology. The United States is no longer the only source of supply for sophisticated products. Thus, if the United States refuses to sell an item to the Soviet Union, one or more of our allies and competitors will gladly take the business.

For a number of years after World War II, the United States enjoyed an extremely favorable balance-of-payments position. For the last several years, however, this position has been in deficit. All indications are that there is no substantial improvement in this position. Accordingly, it is necessary for the United States to adopt new policies and attitudes in its dealings with other countries in order to assure the continued health and well-being of the national economy. One area in which we can substantially improve our position is to do what we can to increase exports. This should be considered in the light of the fact that our European allies are also our competitors in the marketplaces of Eastern Europe and that the Soviet Union is now capable of producing what it needs. Thus, by denying ourselves a market, we hurt our balance-of-payments potential, we give business to our competitors that we need ourselves, and we deny the Soviets nothing, since they can either produce an item themselves or buy it from our allies. Under these circumstances, the committee believes

that to continue a policy of restricting the export of goods which have potential economic significance is unrealistic and only serves to harm the United States.

Subsection (3) is a new finding that the unwarranted restriction of exports from the United States has a serious adverse effect on the stability of our currency abroad and, therefore, on our domestic economy. As noted above, the United States is currently experiencing difficult balance-of-payments problems. In the past few years, our trade balance has been keeping our balance-of-payments deficit from being even greater than it is. Unfortunately, now even this favorable trade balance is decreasing. Under this circumstance, the committee believes that it is desirable that this Nation do everything it can to increase its exports. The committee believes that any restriction of exports is unwarranted if it does not serve some positive function. For example, to restrict the export of nonmilitary goods to Eastern Europe where similar goods of comparable quality and in comparable quantity can be obtained from other sources is unwarranted.

Subsection (4) contains the finding that the uncertainty of Government policy in regard to certain exports has caused American business to curtail its efforts toward exporting those items, to the detriment of our trade balance. The committee believes that American business should be encouraged as much as possible to increase its exports of goods which do not affect the national security. The nations of Eastern Europe and the Soviet Union are currently trading with our Western Allies to a much greater degree than they are with the United States. This is true because of the unilateral restrictive trade policies of the United States. American business is hesitant to attempt to increase its exports to those nations so long as the attitude and policy of the United States remains, in effect, restrictive and discourages such exports. Conversely, the committee believes that if the U.S. Government took a more positive attitude toward exports of peaceful goods, American business would increase its efforts to generate this business, thereby increasing our exports and helping our trade balance.

#### **Declarations of Policy**

Subsection (1) of section 3 states that it is the policy of this country to encourage the expansion of trade with all countries with which we have diplomatic or trading relations except where the President shall determine otherwise. A similar provision is not contained in the Export Control Act.

Subsection (1) also contains the statement that it is the policy of the United States to restrict the export of goods and technology which would make a significant contribution to the military potential of any nation which would prove detrimental to the national security of the United States. The Export Control Act contains no such provision. The committee believes that such a policy statement should be included in this legislation to underscore the determination of this country to protect its national security from military threat. At the same time, it should be reiterated that the committee believes that engaging in trade in materials which have no military significance is not inconsistent with protecting the national security. Instead, it is merely rational self-interest.

Subsection (2) contains a policy declaration which is similar to one contained in the Export Control Act. It reiterates that the regulation

of exports shall be used to protect the domestic economy from excessive drain of materials, to reduce the inflationary impact of abnormal foreign demands to further the foreign policy and fulfill the international responsibilities of the United States, and to exercise the necessary vigilance over exports from the standpoint of their significance to our national security.

As has already been stated, it is the intention of the committee that the expansion of exports be encouraged to the maximum extent consistent with the national interest. However, this section and subsequent sections make it clear that where there is a serious and genuine short supply of some domestic material caused by unusually high foreign demand which results in a substantial inflationary impact on the affected industry, controls on the exportation of these items should be used. By the same token, when there is some genuine and substantial foreign policy consideration or national security consideration which can best be served by the imposition of controls on exports, then the act would authorize such controls.

Subsection (3) contains the provision that export controls should be applied uniformly to all nations with which we trade except where the national security and foreign policy or the need to protect the domestic economy from excessive drain of scarce materials requires that an exception be made. The committee believes that it would be advantageous to this country in its dealings with foreign nations and to individual businessmen from the standpoint of simplicity in regulations, if all exports were regulated in the same manner without regard to their destinations. The committee recognizes that under present circumstances this is impossible, nor will such a trade posture be possible in the near future. However, it feels that as our relations with various nations continue to improve, the Government of this country should attempt to facilitate the free flow of goods and services from this country to other nations.

Subsection (4) declares it to be the policy of this country to formulate, reformulate, and apply controls in cooperation with all nations with which we have defense treaty commitments and to formulate a uniform commercial and trading policy to be observed by all such nations.

Subsection (5) provides that the policy of this country is to use its economic resources and trade potential to further the sound growth and the stability of its economy as well as to further its national security and foreign policy objectives. A similar provision is contained in the Export Control Act in regard to national security and foreign policy. The committee believes that the economic resources and trade potential of this country can and do serve to further the growth and stability of the economy, and that the policy of the United States to continue to use these resources and potential for such an objective should be expressly stated.

Subsection (6) provides that it is the policy of the United States to oppose restrictive trade practices or boycotts against countries friendly to the United States and to encourage and request domestic concerns to refuse to take any action which would support such trade practice or boycott. Such a provision is now contained in the Export Control Act. During the hearings held on this matter, the committee received testimony from the Department of Commerce and the Department of State on how this policy and the implementing language

are being administered. The committee believes that there is ample justification for reiterating the policy of this country on this matter and for retaining the authority to implement the policy.

#### Authority

Section 4(a)(1) directs the Secretary of Commerce to institute such organizational and procedural changes in any office or division which has heretofore exercised functions relating to the control of exports as he determines are necessary to facilitate and effectuate the policy set forth in the act concerned with promoting the expansion of trade. The subsection provides that special emphasis shall be placed on promoting trade with those countries with which our allies are trading to a significant degree more than the United States and on promoting trade with other countries eligible for trade with the United States but not now significantly engaged in such trade. The committee intends that this function shall serve to promote trade with the nations of Eastern Europe and the Soviet Union in all goods except those which would contribute to the military potential of such nation to the detriment of our national security. The committee believes that in the dealings between this country and the nations of Eastern Europe and the Soviet Union, psychological factors are almost as important as the actual substantive provisions of legislation and regulations. The language of the Export Control Act seems to convey that the attitude of the U.S. Government is against trade with Communist countries, regardless of the nature of the goods sought to be exported or imported.

The Export Control Act has been administered over the past 20 years in such a manner as to underscore and ratify this apparent attitude. The committee recognizes that this Nation is attempting to enter a new phase in its dealings with Russia and Eastern Europe—a phase which will hopefully bring about even greater improvements in our relations with those countries than those we have witnessed in recent years. The committee has heard many persuasive witnesses, both this year and last year, who advocated a liberalization of trade restrictions as an extremely effective means of bringing about greater understanding and closer relationships between these nations.

The committee also believes that it is necessary to the continued growth and stability of the economy of this nation to develop additional markets for its products. Accordingly, the committee strongly believes that the establishment of responsibility within the Department of Commerce actively to promote trade with these countries will serve two major purposes. First, it will be an overt indication of the change of policy or attitude of this country from one of restricting trade with the nations of Eastern Europe and Russia to promoting such trade. Second, it will serve as an effective tool in promoting and securing additional markets for the products of American businesses.

There are several other functions that the committee expects the Department of Commerce to fulfill under this provision. It is now the practice of many of the larger American corporations to maintain sales offices all over the world. Many of these companies have representatives who deal specifically with Eastern Europe, Russia, as well as the other nations of Europe and Asia. However, many of the medium- or small-sized companies in the United States are not capable of

maintaining such representatives. Others are capable of maintaining such representatives only in those countries with which they do a substantial business but do not have representatives in those countries in which their business is nominal. Thus, where their business is nominal, their chances of increasing that business are small since they have no one seeking to increase their sales. For those businesses which have no representatives anywhere, the chances of improving their export business are again small since they are not able to seek new markets. The committee expects the Department of Commerce to find ways to actively aid small- and medium-sized companies in developing markets for their products in the nations of Eastern Europe and Russia, as well as other nations, so that these companies will have their fair share of what the committee expects will be a growing market.

The committee expects the Department of Commerce to take all steps necessary to indicate clearly to the American business community that it is the policy of the U.S. Government to encourage trade with all nations with which we have diplomatic or trading relations. The Department of Commerce should also clearly indicate to American business the change in export control procedures and attitudes reflected by the enactment of the Export Expansion and Regulation Act and of the actions taken by the Department of Commerce to implement that act.

The Department should also clearly express its intention to provide all assistance possible to increase the trade of this nation with all nations with which we have diplomatic or trading relations in all goods that do not significantly contribute to the military potential of the country which would prove detrimental to the national security of the United States.

By making public statements of these intentions as the Department begins to implement the act, the attention of American business will be focused on the change in policy. The committee finds that at present, many American businesses are hesitant to seek trade with Russia or Eastern Europe because of the apparent attitude of the Government toward such trade. The use of such publicity will hopefully alleviate this reticence and will result in more companies entering the business of exporting to these countries.

In addition to helping individual companies or industries increase their trade, the committee expects the Department of Commerce actively to pursue ways and means of utilizing the available assets of this country in promoting trade. It has been suggested that with the eventual end of the Vietnam conflict, certain assets which have heretofore been utilized in that conflict might be turned to peaceful applications. For example, rather than mothballing an aircraft carrier, it might be possible to convert the carrier into a floating trade show which could be moved from one country to another to help promote trade.

The committee expects the Department to pursue the matter of promoting trade with creativity and ingenuity and to explore every conceivable means to achieve this objective.

Section (a)(1) also directs the Secretary to review the existing commodity control lists with a view to making promptly the necessary or desirable changes in that list in furtherance of the policy and provisions of the act. The Secretary would be required to include a detailed state-

ment of the action taken by him in compliance with the provisions of subsection (a)(1), beginning with the second quarterly report filed by him after the enactment of the act.

Subsection (a)(2) directs the Secretary of Commerce to use all practicable means available to keep American business apprised of changes in export control policies and procedures with the view to encouraging the widest possible trade.

Subsection (b) provides the President with the authority to prohibit or curtail the export of any articles, materials, or supplies, including technical data or any other information except under such rules and regulations as he may prescribe. These rules and regulations may apply to the financing, transporting, and other servicing of exports. This blanket authority to control exports is the same as that which is now contained in the Export Control Act.

Subsection (b) provides further that the rules and regulations prescribed to control exports in the interest of national security shall provide that express permission and authority must be sought and obtained to export from the United States to any nation or combination of nations if the President determines that the articles, materials, supplies, data, or information sought to be exported would make a significant contribution to the military potential of such nation or nations which would prove detrimental to the national security of the United States and that the articles, materials, supplies, data, or information of comparable quality and technology to that sought to be exported are not readily available from other sources. It is further provided that in the event the President has not made the determination that comparable goods are not available elsewhere, he may still require express permission and authority to export such item if he determines it to be necessary in the interest of national security and includes a detailed statement with respect to that action in the next quarterly report submitted after the action is taken.

Over the past year, the committee has held extensive hearings on the various questions which exist concerning United States trade with the nations of Eastern Europe and the Soviet Union. During the course of these hearings, the committee received testimony and statements from a large number of American businesses. Without exception, these businesses have a strong desire to see that the national security of the United States is not in the least jeopardized by any action they might take in regard to exporting materials to Eastern Europe and the Soviet Union. At the same time, they want to be able to sell their products wherever there is a market if the national security will not be adversely affected. One of the greatest frustrations to these companies in their attempts to market their products is the fact that they continually lose business to Western European or Japanese competitors because of the unilateral export controls maintained by the United States on literally hundreds of items. The complaints made by business were not, for the most part, directed against the controls utilized by the United States on those items for which the United States is the only source of supply or on which all of our allies exercise controls in cooperation with the United States. They were directed at the fact that the United States maintains export controls on approximately 1,300 categories of goods which no other free world country controls. Thus, in order for a United States



firm to sell any of the goods on that list to Eastern Europe, they have to seek a license, which may or may not be granted. The competitors of that United States firm which are domiciled in any other free world country are not subjected to such restriction. They may freely sell the goods. The competitive disadvantage to the United States firm is obvious; even if it finds a market, it cannot make a commitment to sell until it receives an export license, which may take months, or even never be granted. Its foreign competitor can make an immediate commitment.

The committee believes, therefore, that for the United States to attempt to unilaterally control the export of goods which are freely available from other sources is both futile and useless. The nations of Eastern Europe and the Soviet Union do not suffer from this unilateral control. They merely obtain the items from France, Italy, Great Britain, Canada, Japan, or from one or more other nations. Thus, the only parties to suffer from these unilateral controls are the American businesses which conceivably could have made a sale if these controls had not existed and the United States itself which lost an opportunity to increase exports, thereby improving our trade balance.

The committee received some testimony to the effect that there would be no appreciable increase in U.S. exports to the nations of Eastern Europe and Russia if these unilateral controls were removed. The reasoning given was that the nations of Eastern Europe have a limited supply of hard currency, and, therefore, are not capable of purchasing exports to any substantial degree above their current level. This may be true. However, the committee takes note of the fact that the United States currently commands approximately 16 percent of total world exports exclusive of Eastern Europe and the Soviet Union. However, the United States only has a little over 2 percent of all free world exports to Eastern Europe and the Soviet Union.

The committee firmly believes in the ingenuity, aggressiveness, and perseverance of the American businessman. The committee believes that if the American businessman was freed of futile restrictions on his attempt to obtain a larger share of the free world trade now being carried on with East Europe, he would be able to obtain a substantial portion of this trade from his non-U.S. competitors. The committee received many specific examples of sales which could have been made by a particular company but were not because of export controls. Many of those examples were cases in which a sale of comparable goods was subsequently made by a competitor from a nation which did not control the particular items.

The committee believes that this subsection will allow the President to retain the necessary authority he needs to adequately protect the national security. At the same time, the committee expects the Department of Commerce to revise its export control lists to remove as many goods as possible from such lists if articles, materials, supplies, data, or information of comparable quality or technology are freely available from other sources. If there is a serious question as to whether such item is so available, then the President retains the authority to control such item. The committee believes that this provision will enable American business to substantially increase its efforts and its successes in obtaining a larger portion of trade with Eastern Europe. This will contribute to the overall prosperity of

American business and, the committee believes, will result in an improvement in the trade balance of the United States.

The committee will closely observe the actions of the Commerce Department in its administration of the provision which allows regulation of items which are, or may be, available from other sources. Accordingly, the Department of Commerce should take great care in making its report to see that a full and detailed statement of all such actions is set forth and including with a great degree of specificity the particular export sought to be made, the nation or nations affected by the proposed export, the Department's action, and the specific reasons for the action taken.

Subsection (b) also contains a provision which directs the Department of Commerce to implement the policy contained in the act in regard to opposing restrictive trade practices or boycotts fostered or imposed by foreign countries against countries friendly to the United States. This provision is identical to one now contained in the Export Control Act.

Subsection (c) of section 4 provides that nothing in the act or in the rules and regulations authorized under it shall in any way be construed to require authority and permission to export articles, materials, supplies, data, or information except where the national security, the foreign policy, or the need to protect the domestic economy from the excessive drain of scarce materials make such a requirement necessary. The committee wishes to underscore its belief that American exports are an inherent part of the economic foundation and well-being of this country. The right of American business to freely export its products should not be abridged except where necessary to fulfill some overriding national interest.

Subsection (d) provides that the President may delegate the administration of this act to such departments, agencies, or officials as he may deem appropriate.

Subsection (e) provides that the authority conferred by section 4 shall not be exercised with respect to agricultural commodities during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy. That subsection further provides that such commodities can be controlled to effectuate the policies set forth in section 3 concerning foreign policy or national security. The subsection is identical to one now contained in the Export Control Act.

#### Consultation and Standards

Section 5 provides that the department, agency, or official determining the action to be taken with regard to the regulation and the expansion of exports shall seek information and advice from the different executive departments and agencies which are concerned with domestic and foreign policies and with the operations having an important bearing on exports. It further provides that, consistent with considerations of national security, the President shall seek information and advice from various segments of private industry in connection with the making of these determinations. This section is similar to one now contained in the Export Control Act. It does add the provision requiring the President to consult with industry.

The committee believes that by so doing the executive department will be aided in making administration of the act as practicable as possible under all circumstances.

#### Violations

Section 6 deals with violations of the act. Subsection (a) provides for a fine of not more than \$10,000 or for imprisonment for not more than 1 year for any knowing violation of any provision of the act or any regulation, order, or license issued under the act. For any subsequent offense, the subsection provides for a fine of not more than \$25,000 or for imprisonment of not more than 5 years or for both. This subsection is identical to one now contained in the Export Control Act with the exception that the committee added the requirement that the violation be a knowing one. The committee is cognizant of the fact that the procedures and requirements required of a business which exports to some countries are extremely complicated. The committee is concerned that the possibility of a jail sentence for an apparent innocent violation may serve as an unnecessary deterrent to American businesses which attempt to enter the field of exporting to certain countries. The committee is also concerned over the constitutional question of a severe jail sentence and fine for unknowing violations. Accordingly, the committee added the requirement that the violation be with knowledge.

Subsection (b) provides for a fine of not more than \$20,000 or for imprisonment of not more than 5 years or for both for anyone who willfully exports anything contrary to any provision of the act or any regulation, order, or license issued under it with knowledge that such export will be used for the benefit of any Communist-dominated nation. This subsection is identical to one now contained in the Export Control Act.

Subsection (c) provides that the head of any department or agency exercising functions under the act may impose a civil penalty not to exceed \$1,000 for each violation of the act or any regulation, order, or license issued under the act. This provision is identical to one now contained in the Export Control Act.

Subsection (d) provides that the payment of the penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding 1 year after the imposition of such penalty, to the continued right to export of the person upon whom such penalty was imposed. This is identical to the provision now contained in the Export Control Act.

Subsection (e) provides that penalties paid pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The penalty may be refunded within 2 years after payment on the ground of material error of fact or law in the imposition of the penalty. This subsection is identical to one now contained in the Export Control Act.

Subsection (f) provides that suit may be brought for the recovery of the penalty imposed under subsection (c). This provision is also in the Export Control Act.

Subsection (g) provides that nothing in subsections (c), (d), or (f) shall limit the availability of any other administrative or judicial remedies with respect to violations, the authority to compromise and settle administrative proceedings, or the authority to compromise,

remit, of mitigate seizures and forfeitures. This subsection is also contained in the Export Control Act.

With the exception of the noted change in subsection (a) of Section 6, all of section 6 is identical to the provisions dealing with violations now contained in the Export Control Act. The committee believes that the executive department should have varied authority to punish violations of the act and regulations. The Department of Commerce advised the committee that it felt the current Export Control Act provisions were adequate. Consequently, with the one noted change, the committee decided to retain the provisions of the present law in connection with violations.

#### **Enforcement**

Section 7 of the act deals with enforcement of the provisions of the act. Subsection (a) provides authority to the Commerce Department to make investigations and obtain information, require reports and recordkeeping, inspect books, records, and other writings, premises, property of any person, and take the sworn testimony of any person. The officers or employees who perform these functions may administer oaths or affirmations, issue subpoenas requiring persons to appear and testify or produce books, records, and other writings. In case of a refusal to obey a subpoena, the U.S. district court may issue an order requiring such persons to appear and give testimony or otherwise to comply with the subpoena. This provision is identical to one contained in the Export Control Act. It does contain an express provision allowing such investigations to ascertain liability arising under the Export Control Act. This provision was believed necessary in order to allow the Department of Commerce to ascertain violations of the Export Control Act after it is superseded by this act.

Subsection (b) provides that no person shall be excused from complying with the requirements of this section because of the privilege of self-incrimination, but the immunity provisions of the Compulsory Testimony Act shall apply. This is identical to a provision in the Export Control Act.

Subsection (c) provides that the agency exercising the functions under this act shall not publish or disclose information obtained under it which is deemed confidential or for which a request for confidential treatment has been made by the person furnishing such information unless such withholding is contrary to the national interest.

Subsection (d) requires that the reporting requirements shall be designed to reduce the cost of reporting, recordkeeping, and export documentation to the extent feasible consistent with effective enforcement and effective compilation of useful trade statistics. The subsection provides further that the requirements be periodically reviewed and revised in the light of changes in the field of information technology. The Department is required to include a detailed statement in its quarterly report with respect to the actions taken in compliance with this subsection.

During the hearings held on this subject, the committee received very persuasive testimony to the effect that American business is needlessly spending millions of dollars a year fulfilling the requirements concerning export documentation. The rules and regulations require that an exporter file and have authenticated an export document

prior to the date of shipping, even though he had previously obtained a license to export the shipment. This export document is used for several purposes. First, it serves as a check to make sure that no one is violating the provisions of his license in exporting certain materials. It also serves as a check to make sure that goods that normally require a license are not being shipped without a license. One of its more important functions is that it serves as a means by which statistics involving exports are obtained by the Government. The witnesses appearing before the committee had no quarrel with any of these objectives. They did testify that for statistical purposes, the data could be submitted on a periodic basis as opposed to individual filings for each export.

They also pointed out that there have been virtually no prosecutions as a result of information obtained through the use of export documents. The committee seriously considered including a provision that would prohibit the use of these export documents. However, the Department of Commerce assured the committee that it intends to institute reforms in this matter in the very near future. The Department stated that it would remove the export document requirement entirely from shipments to some countries and would greatly liberalize the requirement with regard to shipment to other countries. It intends to do this but does want to retain the authority to reinstitute whatever portion of the requirements is deemed necessary if some particular relaxation proves to be unwise. With this assurance from the Department, the committee acquiesced in its request that no mandatory language be put in the act forbidding the export documentation requirements. The committee does expect, however, that the Department of Commerce fulfill its commitments to the committee in the near future.

Section 8 exempts the provisions of this act from the provisions of the Administrative Procedures Act and, in that regard, is similar to a provision contained in the present Export Control Act.

Section 9 deals with information to exporters. During the consideration by the committee over the past year of the problem of export controls, the committee found that one of the more frustrating experiences to which the American businessman is subjected is that once he has filed an application for a license to make a particular export, he is never able to ascertain the status of his application. The committee found that many different agencies of the Government are involved in the consideration of the license applications. The committee believes that it would be of benefit to the businessman if he were kept informed of the status of his license and also was advised of any problems which may arise during the consideration of the application. On the other hand, the committee did not wish to impose unnecessary requirements on the Department of Commerce which would hamper it in its effective administration of the act. This section is an attempt to grant American business the opportunity to be kept abreast of the status of an application without unnecessarily hampering the functions of the Department.

The section provides that insofar as is consistent with national security, foreign policy, and the effective administration of this act, the executive branch must inform each prospective exporter of the considerations which may cause his export license request either to be

denied or subject to lengthy examination. He must also be informed of the circumstances which actually do arise during the Government's consideration of his application which are cause for denial or further examination. In addition, each exporter must be given the opportunity to present evidence and information which he believes will help the agencies concerned resolve any problems or questions which are or may be connected with his application for license. Finally, the exporter must be advised of the reasons for the denial of his export license application.

As noted earlier, the committee did not wish to impose unnecessary requirements on the Department of Commerce. However, in all communications from the Department of Commerce to the prospective exporter pursuant to the provisions of this section, the committee expects the Department of Commerce to use the greatest degree of specificity and detail necessary to fully apprise the prospective exporter of the status of his application.

#### **Export Expansion Commission**

Section 10 would establish an Export Expansion Commission composed of 15 members appointed by the President. One of these persons would be designated Chairman. The function of the Commission would be to conduct a study to determine practicable ways in furtherance of the national interest by which exports can be expanded without jeopardizing the national security, to all nations with which the United States is trading. Special emphasis would be placed by the Commission on promoting trade with the nations of Eastern Europe and the Soviet Union (where U.S. trade is only a fraction of that engaged in by our allies) as well as other countries eligible for trade with the United States but not significantly engaged in such trade. The section provides that the Commission coordinate its activities with the National Export Expansion Council and make a final report 1 year after the date of enactment.

The committee believes that such a Commission would serve to focus attention on a change of policy being expressed by Congress and thus would serve to encourage American business to increase its efforts to engage in trade with the Soviet Union and Eastern Europe. Also, it is believed that the Commission would fulfill a substantial function in finding and suggesting ways and means by which such trade can be increased other than mere relaxation of restrictions on such trade. The committee recognizes the existence and work of the National Export Expansion Council. It is not intended that the two commissions overlap their functions to a great degree. The National Export Expansion Council is designed primarily to attempt to increase our exports to all nations. In the performance of this function, that Council has focused to some degree on the problems of trade with Eastern Europe. The express function of the Export Expansion Commission will be to focus almost exclusively on trade problems arising in trade with Eastern Europe.

Subsection (c) provides that each member of the Commission be paid at the rate of \$100 per day plus travel expenses and per diem pay.

Subsection (d) provides that the Commission may appoint and fix the compensation for an executive director who, in turn, may employ

and fix the compensation of additional personnel as may be necessary to carry out the functions of the Commission. No individual may receive compensation in excess of the rate authorized for a GS-18 under the general schedule.

Subsection (e)(1) provides that the Commission may require any executive department or agency to furnish available information which the Commission deems useful.

Subsection (e)(2) provides that any department or agency may detail on a reimbursable basis any of its personnel to assist the Commission.

Subsection (f) provides that the Commission shall cease to exist 30 days after the submission of its final report.

Subsection (g) provides authorization for the appropriation of such funds necessary to carry out the provisions of the section which establishes the Commission.

#### **Quarterly Report**

Section 11 provides that the Government department exercising any functions under the act make a quarterly report within 45 days after each quarter to the President and to the Congress.

#### **Effects on Other Acts**

Section 12 provides that the act of February 15, 1936 relating to the licensing of exports of tinplate scrap is superseded, but that nothing contained in the act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity. The authority under the act must be administered in such a fashion as to achieve effective coordination with the authority exercised under section 414 of the Mutual Security Act of 1954.

#### **Effective Date**

Section 13 provides that this act shall take effect upon the expiration of the Export Control Act of 1949. It also provides that all outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under the Export Control Act of 1949 or under section 6 of the act of July 2, 1940, shall, until amended or revoked, remain in full force and effect.

#### **Termination Date**

Section 14 provides that the Export Expansion and Regulation Act shall terminate on June 30, 1973, or upon any prior date which the Congress by concurrent resolution or the President by proclamation may designate.

### Minority Views of Messrs. Bennett and Tower

We agree that legislative authority should be continued to provide for export controls for reasons of national security, foreign policy, and domestic short supply. However, we support a straight extension of the existing Export Control Act and oppose the bill reported by the majority.

Over the years, the existing legislation has proven to be very effective in protecting the national interests. Time and time again, it has shown its adaptability to changing world conditions. We believe it would be extremely unwise to introduce into this legislation which has as its main purpose providing necessary *control* authority, another completely different and opposite concept of *trade expansion*. Other legislation covering tariffs, export credit, and trade promotion is much more appropriate for dealing with trade expansion. In attempting to have this bill provide for control while also urging trade expansion, what has resulted is a misleading bill from its title throughout most of the new provisions covering export control policies and procedures.

#### REQUIREMENTS COSTLY AND UNNECESSARY

The bill interposes a number of requirements in the administrative area which we believe to be unnecessary, burdensome, and costly for the Government. These requirements include organizational and procedural changes by the Secretary of Commerce and extensive review of the complete export control list by the Department of Commerce, frequent notification and detailed explanation to the Congress of routine exceptions authorized by the bill, a continuing review of reporting and documentation requirements together with detailed statements to the Congress of action taken and a burdensome requirement that extensive information be provided to exporters throughout the Department's consideration of licensing applications. In addition, the bill establishes a new Presidential Commission on Export Expansion which would, to a considerable extent, duplicate work already being carried on by established organizations and would thereby confuse rather than assist the export expansion program.

The bill requires the President to include a detailed statement of his action, if he restricts exports without making the determination, that comparable goods are not available elsewhere or that the exports would make a significant contribution to the military potential, which would prove detrimental to the national security of the United States. Even though as an exception, the President is granted the authority to restrict in the interest of national security, any commodity or technology as long as he reports such action to the Congress, the effectiveness of those administering the Act is bound to be inhibited by these changes. Exporters and representatives of other governments will read a significant change into the language of the bill and bring



additional pressure to bear for reduction in controls on critical items and for approval of questionable export applications.

At best, the bill will be confusing to exporters, cause significant difficulties in administration and stimulate troublesome court challenges. Further, it will give an unwarranted signal to the Soviet Union that we intend to make our advanced industrial goods more readily available now, even though they have demonstrated no real desire for improved relations between East and West. In fact, last year's Czechoslovakian invasion stands as strong evidence against any such interest.

At worst, the bill could result in undue weakening of export controls with attendant risk to our national security.

#### THREAT TO NATIONAL SECURITY MINIMIZED

The proposal which would replace the present Export Control Act is based on the assertion that factors, which brought about the enactment of the Export Control Act no longer exist. We cannot agree with such an assertion.

It is suggested that we are now living in an era in which the Soviet Union presents a reduced threat to the security of the United States. We find no evidence that such a new era has been ushered in. In fact, we consider the Soviet Union as a much greater threat to the security of the United States than it was when the Export Control Act of 1949 was passed. While the majority denies this, it is interesting to note it admits, that the Soviet economy was undergoing a real struggle to provide the barest necessities because of the ravages of war when the Export Control Act was enacted in 1949, and goes on to claim that the Soviet economy has now become one of the most self-sufficient on earth. We do not feel it necessary to argue over the validity of that claim because of the differences in the consumption patterns and standards of living of various countries. But we fail to see any logic in the majority conclusion, that such an economy provides less of a threat to this Nation, than one which had a real struggle to provide the barest of necessities. We also point to the relative military capabilities of the United States and the Soviet Union in 1949 as compared with the present. Thus, we find the whole basis of the bill reported by the majority to contain a contradiction.

In addition to being contradictory on its face, many of the provisions of the bill contradict each other. The present Export Control Act establishes a forthright policy of restricting exports on the basis of contributions to economic potential or military potential. Its language allows restrictions of exports whenever it is determined by the President that they make a significant contribution to the military or economic potential of a nation or nations, which would prove detrimental to the national security and welfare of the United States. The majority has eliminated the criteria of "economic potential" and retained only the "military potential" criteria, yet it boldly asserts that the President's "authority to control exports is the same as that which is now contained in the Export Control Act." Either they have tried to reduce his powers or flexibility or they haven't, but it can't be both.

# ECONOMIC POTENTIAL NOT CONSIDERED THREAT

While apparently deciding that economic potential and military potential are completely separate so far as the national security of the United States is concerned, the majority infers that its proposal underscores the determination of this country to protect its national security from military threat. This item is included in a policy section in the bill, and the majority makes its point saying, "The present law contains no such statement of policy." We find this inference to be unwarranted. The present Export Control Act in its authority section says that the rules and regulations set by the President or his delegated agencies or officials—

shall provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information from the United States, its territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President shall determine that such export makes a significant contribution to the military or economic potential of such nation or nations, which would prove detrimental to the national security and welfare of the United States.

It is beyond us to understand, how the majority feels that it has in any material way strengthened prohibitions against exports, having military potential which would be detrimental to the national security. Particularly is it difficult to understand why the majority makes a point of this in light of the fact that the new "policy section" is a carryover from an earlier bill which did not allow the President to deny exports with significant military applicability unless there was in addition "substantial evidence that the particular exportation is likely to be used for military purposes, and that similar items are not readily available to the importing country from other sources."

## POLICY IN BILL IS UNCERTAIN

It is ironic that the proposed bill in section 2 (4) says that the Congress finds that "the uncertainty of Government policy toward certain categories of exports has curtailed the efforts of American business \* \* \*", yet this bill is sure to increase uncertainty. The whole announced purpose of the bill is to encourage the expansion of trade with all countries with which we have diplomatic or trading relations. This is stated in sections 3(1)(A), section 3(3), and section 4(a)(1). It is interesting to note, however, that in every case where this "change of policy" is stated, it is always followed by an exception which allows the President to make export determinations on the basis of national security, foreign policy of the United States, or the need to protect the domestic economy. Those are the criteria which are used in the present Export Control Act. Thus the bill appears to encourage the expansion of trade on the one hand, while on the other hand it provides for essentially the same restrictions which presently exist.

In addition to the language included in the bill, the report states that "the Department of Commerce should clearly indicate to American business the change in export control procedures and attitudes

reflected by the enactment of the Export Expansion and Regulation Act \* \* \*." The report continues, stating that the Department of Commerce should make "public statements" so that the attention of American business will be focused on the change in policy. We think this puts the Department of Commerce in an awkward and untenable position, since the claimed change in policy which must be brought to the attention of American business is unclear and confused.

It will be difficult for the Department of Commerce to try to explain to American business that on the one hand the bill holds out the policy of equal treatment for all countries, yet section 3(5) of the bill states that it is the policy of the United States to use its economic resources of trade potential to further foreign policy objectives. We maintain that this latter policy is the one under which the United States has been operating for many years and in effect nullifies the "equal treatment change." The form without substance becomes even more apparent when it is known that the President of the United States, the one who holds the authority, opposes a change in policy at this time. Administration spokesmen have made it very clear that the President seeks a more appropriate time for liberalizing trade with the Communist countries. Yet the Congress, if it should pass this bill, would give, in the language of the majority report, "an overt indication of the change of policy or attitude of this country \* \* \*." We believe that the President should have the latitude to relate liberalization in the trade area to broader foreign policy considerations. This bill, in our view, is an attempt to preempt the President's judgment on timing of liberalization, while still holding him responsible to determine specific export policy.

#### FEW EXPORT REQUESTS DENIED

The committee report indicates that the nations of Eastern Europe and the Soviet Union are currently trading with our Western Allies to a much greater degree than they are with the United States "because of the unilateral restrictive policies of the United States." This is far too simplistic to be accurate. The items under export control represent only a small fraction of the goods generally exchanged in international trade. Western Europe does much more business with Eastern Europe than we do primarily because of geographical proximity and traditional trade patterns. The great bulk of this trade is in products which our companies are also free to export, if they can obtain orders.

The Department of Commerce testified that less than 2 percent of the export license applications received for Eastern Europe are denied. Supporters of this bill claim that is true because American exporters just don't try to export to Eastern Europe or the Soviet Union in items on the control list in any degree because they know that they will be turned down. Any controls may have a deterrent effect on efforts to export, but we question the suggestion that exporters know they will be turned down. We do this because in the last quarterly report dealing with export control, we find that approvals were given for exports to East European countries and the Soviet Union for such items as harvesting machines, tractors, electronic digital computers, metalworking machinery, metal treating and metal powder molding machines, rubber processing and rubber products

manufacturing machines and parts, nuclear radiation detecting and measuring instruments, synthetic rubber, metal cutting milling machines, gear cutting machines, well-drilling machinery, metal processing and heat treating furnaces, telecommunications apparatus, and many other similar exports. With approvals on such a broad group of industrial products, not to mention the many agricultural and less sophisticated product approvals, how would an exporter come to the conclusion that his application would automatically be turned down?

We are particularly disturbed by repeated statements by the bill's proponents that its intent is to increase trade in "peaceful goods." Yet most of the industry witnesses represented companies with highly advanced technological products such as electronic control equipment, computers, and machine tools. Enactment of this bill following our hearings could well lead to a conclusion that the intent of Congress is to consider the bulk of our advanced technological products as "peaceful goods" to be freed for unrestricted sale to Eastern Europe. The result could be serious mutual misunderstandings among business, foreign governments, and those in charge of administering export controls.

#### TRADE POTENTIAL SMALL

The majority also discusses the dwindling of our trade surplus in the past few years and infers that relaxing of our export controls to Eastern Europe may measurably improve that situation. We are extremely concerned over the virtual elimination of our trade surplus which only 5 years ago was over \$7 billion. We would like to point out, however, that this dwindling is not the result of the operation of our Export Control Act, but results from basic economic factors which are conveniently disregarded in the majority report.

Actually most knowledgeable estimates indicate that trade with Eastern Europe, even under most favorable conditions, can grow only modestly, and is unlikely in the foreseeable future to reach as much as 1 percent of our total exports.

East-West trade must be a two-way street. Because Eastern Europe has limited convertible currency, it must sell us about as much, as it buys. However, Eastern Europe has few products which we need, and thus there is a limited basis for significant continuing two-way trade. The Soviet Union and Eastern Europe today are greatly interested in our advanced products and technology, many of which have both civilian and military significance, to expand the industrial capacity. Many of these transactions become one-shot deals with little or no follow-on sales prospects.

#### INCONSISTENCY ON CONFIDENTIALITY

We find a further contradiction in the committee's action on the proposed bill. Section 7(c) provides that "no department, agency, or official exercising any functions under this act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the

national interest." Section 9 of the bill requires the agencies, departments, and officials responsible for implementing the rules and regulations authorized under this act to inform exporters of considerations which may cause a denial of license request so long as the information does not jeopardize the national security and effective administration of this act. The Department of Commerce, in its attempt to clarify the bill, recommended that a provision be included in this new section providing for confidentiality of business information. The majority turned down that request. We now have one section, section 7, requiring confidentiality, while the other section does not provide for confidential treatment of business information. We find this inconsistency by the majority unexplainable.

#### PENALTIES WEAKENED

The penalties for violating the act have been changed from those presently contained in the Export Control Act. Despite the fact that the present penalties have been used primarily as a deterrent, the committee decided to do away with a possible 1-year jail sentence for a violation unless it could be proved that the violator did so knowingly. During our hearings and discussions of the committee, there was no indication that the present penalty provisions had been misused or abused. We find it interesting, therefore, that the committee uses as a justification for the change that it is "concerned over the constitutional question of a severe jail sentence and fine for unknowing violations." We are unaware of any prior concern on a constitutional basis of the present provision authorizing up to 1-year imprisonment for a violation, and this has been part of the act for 20 years.

#### INCONSISTENCY IN TREATMENT OF COUNTRIES

It seems to us that the proponents of the bill should either decide whether they want to have equal treatment between Communist and non-Communist countries except for specific Presidential determinations or whether they want some differentiation retained as in the present Export Control Act. Section 3(3) of the bill states that "It is the policy of the United States that any export controls found necessary should be applied uniformly to all nations with which the United States engages in trade \* \* \*" If, indeed, it is the intent of the majority to have equal treatment between Communist and non-Communist nations, why do they retain unequal penalty provisions? Much harsher penalties are authorized in the event of exports contrary to the act with knowledge that such export will be used for the benefit of any Communist-dominated nation. The committee report properly states that this subsection is identical to one now contained in the Export Control Act. What it doesn't say is that the Export Control Act differentiates between Communist and non-Communist nations, whereas this bill makes no such differentiation and in no other place in the bill is the term "Communist-dominated nation" used.

#### ADMINISTRATION SUPPORTS PROPER EXPORTS

During our hearings, representatives of the Department of Commerce explained their desire to assist American business with its exports. That is one of the major purposes of the Department of

Commerce, so such an attitude was not unexpected. They explained their attempts to reduce the number of items for which licenses are required as well as their efforts to decrease to a minimum the paper work required by the business community. We have no reason to disbelieve their statements. In fact, we have every reason to believe that despite the very short period that the Department has been under the new administration, much has been done to improve its operations. We have been assured that for years it has been the Department's policy (limited only by budgetary restrictions) to maintain continual review of items requiring export licenses—adding to or deleting from the list whenever conditions warranted. We have confidence that the present administration intends to implement that policy and think they should be given an opportunity to prove themselves.

PRESENT ACT IS BETTER APPROACH

The committee hearings and in particular the information provided by the administration have demonstrated that no sharp reduction in regulatory authority is warranted. The existing Export Control Act has been shown to have ample flexibility to accomplish everything that could be accomplished through this new proposal. The Export Expansion and Regulation Act of 1969 as proposed in S. 1940 has been modified to substantially restore the authority it at first had sought to weaken. We now have a bill which retains parts of the original proposal, parts of the present Export Control Act, and some provisions which are inconsistent with both. Proponents of the bill apparently feel that significant changes have been made from the present Export Control Act, but the actual substance of these is far less than would appear. It must be recognized that the bill would be interpreted as a liberalization signal if nothing else. There is no evidence of the Soviet Union's readiness to move toward closer relations with the West which would warrant overriding the President's judgment that this is not the time to signal a change in relations with a new export control policy.

We, therefore, urge a straight extension of the Export Control Act of 1949 and recommend that the Senate defeat this proposal.

WALLACE F. BENNETT,  
JOHN G. TOWER.

### Supplemental Views of Messrs. Mondale, Hughes, and Percy

The Export Expansion and Regulation Act, as reported from the International Finance Subcommittee, contained a section ending the 50 percent shipping bottoms requirement for wheat and feed grains sold under regular commercial terms to Russia and Eastern Europe. The Banking and Currency Committee decided to substitute strong committee report language for that section; we agreed to the approach of the committee with reservations.

The original cargo preference concept (50-50 U.S. flag) is a product of the Merchant Marine Act of 1936 and the Cargo Preference Act of 1954. It applies only to Government-sponsored exports, not commercial exports. It applies whenever the United States procures equipment, materials, or commodities for its own account, or furnishes them to a foreign nation without reimbursement, or advances funds or credit, or guarantees convertibility of foreign currencies in connection with the furnishing of such equipment. The U.S. Government pays the added shipping cost which may be occasioned by the application of cargo preference.

The cargo preference concept was extended to commercial transactions for the first time in 1963 in connection with the commercial sale of U.S. wheat to the Soviet Union. Cargo preference applies to no other commercial shipments to any destination in the world except Eastern Europe and Russia. No Federal subsidy is available for the commercial sale of wheat or feed grains to meet the added shipping cost from cargo preference; therefore, there have been virtually no shipments of wheat or feed grains to the countries of Eastern Europe or Russia since 1963.

In testimony before the Senate Foreign Relations Committee in 1965, the State Department listed a number of factors which might *if taken together* cause a shipment to be termed "governmental" and therefore subject to cargo preference. One of these factors was whether the commodity is sold under an export subsidy such as the transportation subsidy which allowed the wheat sale to Russia in 1963 despite the cargo preference concession.

We want to make it clear that the committee report language refers to export subsidies such as a transportation subsidy and not to export subsidies under the International Grains Arrangement. The world market prices for wheat are governed by the International Grains Arrangement of 1968. Under the mechanism provided in the arrangement, international and domestic prices for wheat vary. At the present time, American wheat exporters pay an export tax on some classes of wheat. With a change in the world price market, American wheat growers may receive an export subsidy if the price of American wheat goes above the world market price. The sales under the International Grains Arrangement, whether including an export tax or subsidy, remain private commercial transactions.

WALTER F. MONDALE,  
CHARLES H. PERCY,  
HAROLD E. HUGHES.

### Individual Views of Mr. Goodell

The Export Expansion and Regulation Act of 1969, reported by this committee, has my full support. It will give American businesses a greater degree of flexibility in the conduct of foreign trade. It will encourage the peaceable East-West trade relations that are desirable to help foster an international atmosphere of negotiation, rather than confrontation.

Nevertheless, I regret I am unable to concur with that portion of the committee's majority report which pertains to the present 50 percent American-flag cargo preference for East-West grain exports.

Earlier versions of this bill contained a provision—proposed section 4(f)—that would have barred this 50 percent cargo preference.

I opposed the adoption of this provision, and requested that the committee hold hearings so that representatives of the maritime industry—the industry most directly affected—would have the opportunity to submit their views. At the hearing, held on July 10, we received very persuasive testimony from this industry, and also from representatives of the Department of State and the Department of Commerce—all opposing section 4(f).

For many years now, the American merchant marine has been declining in size and strength. Over two-thirds of the fleet vessels depend heavily upon cargo preferences which allow them to compete for commercial cargoes in foreign trade.

The proposed elimination of the 50 percent bottoms requirement would set an undesirable precedent for elimination of other cargo preferences at a time when our merchant fleet is at a serious competitive disadvantage.

The testimony heard by the committee on July 10 supported this position. As a result, the members of the committee voted to delete this provision in the bill.

However, the majority report contains language which directs the Department of Commerce sharply to limit the scope of the 50 percent cargo preference.

This language is, I believe, objectionable for the same reasons as was the proposed section 4(f) that was deleted.

There is no need for this committee to issue directives to the executive branch on how the cargo preferences rules should be administered. Administration officials have testified that it was "neither desirable nor necessary to deal with this matter by legislative means." The President, by existing legislative authority, is able to deal flexibly with the question of cargo preferences as changes in our foreign trade needs occur.

The inclusion of this language in the majority report, can serve only to hamper the executive branch in administering the cargo preference rules in a flexible, effective fashion.

CHARLES E. GOODELL.